



## **EMN Ad-Hoc Query on COM AHQ on the Existing legal framework on false documents**

Requested by COM on 14th March 2016

### **Irregular Migration**

Responses from [Austria](#), [Belgium](#), [Croatia](#), [Cyprus](#), [Estonia](#), [Finland](#), [France](#), [Germany](#), [Hungary](#), [Latvia](#), [Malta](#), [Poland](#), [Slovenia](#), [Spain](#), [Sweden](#), [United Kingdom](#) (16 in total)

#### Disclaimer:

*The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.*

## **Background information:**

The Action Plan against migrant smuggling adopted on 27th May 2015 included as one of its key aims the enhancement of the EU's police and judicial response to tackling organised migrant smuggling. Within this is a commitment to evaluate EU legislation on migrant smuggling in view of possible modification by 2016. Work is currently underway to evaluate the potential to improve the so called "facilitators package" by examining Directive 2002/90/EC, which defines the facilitation of unauthorised entry, transit and residence; and Framework Decision 2002/946/JHA, that sets out the penal framework designed to prevent the facilitation of unauthorised entry, transit and residence.

Subsequent to the adoption of the Action Plan on migrant smuggling, Council conclusions of 10 March 2016 have also outlined the importance of the risk presented by the worrying increase in false or stolen identification documentation being used to facilitate unlawful entry into member States.

In this context, the Commission intends to gather updated information on the existing legal framework linked to the use, procurement, supply and production of false documents as well as administrative laws applied to commercial companies responsible for carrying passengers into the EU and between Member States. The information will provide the Commission with a broad view across Member States of the current judicial framework within which document fraud is dealt and will feed into the process of evaluation of the current legislation. In order to keep within the tight deadlines for finalising this process, your assistance is requested in responding to the following questions by April 4th.

## **Questions**

1. What criminal and/or administrative sanctions (please specify) do Member States have in place for:
  - a. Individuals using a false instrument -**  
*Use of false Travel Document/National ID card etc. to enter MS countries or fraudulently apply for an extensions to stay in their country;*
  - b. The provision and/or procurement of false instrument -**  
*In order to assist the illegal crossing of someone into their state (migrant smuggling);*
  - c. The production of false instruments -**  
*Designed to be used by*  
*organised crime groups, migrant smugglers or individuals to enter and/or reside in Member State irregularly;*
  - d. The use of forged or counterfeit supporting documents -**  
*The use of supporting documents to support fraudulent applications for genuine travel documents, visas or extensions to permission to remain in a Member State (FOGs – Fraudulently Obtained Genuine travel documents/visas/national ID cards etc.).*
2. What administrative sanctions are applied in MS to Carrying Companies who allow passengers to board flights, trains, ferries and coaches using forged or counterfeit travel or identity documents?

3. Are any statistics on investigations, prosecutions and convictions for the above mentioned offenses available? If so, can you provide figures for 2014 and, if available, 2015?

### Responses

	Country	Wider Dissemination	Response
	Austria	Yes	<p>1. a. Individuals using a false instrument Criminal sanctions Art. 223 Criminal Code (Forgery of Instruments) (1) Who produces a false instrument or forges a true instrument with the intent that the instrument be used in legal dealings in order to prove an entitlement, a legal relationship or a fact, is to be punished with prison sentence of up to one year or with a fine of up to 720 day's rates. (2) Likewise is to be punished, who uses a false or forged instrument in legal dealings in order to prove an entitlement, a legal relationship or a fact. Art. 224 Criminal Code (Forgery of Instruments enjoying Particular Protection) (1) Who commits a punishable act under Art. 223 in relation to a public Austrian instrument, a foreign public instrument, if it is equated to Austrian public instruments by statute or international treaty, a last will or a security paper not indicated in Art. 237, is to be punished with prison sentence of up to two years. b. The provision and/or procurement of false instrument Criminal sanctions Art. 224a Criminal Code Who takes over from someone else, obtains for himself or someone else, transports, leaves to someone else or otherwise possesses a false or forged instrument enjoying particular protection (Art. 224) with the intent that it be used in legal dealings in order to prove an entitlement, a legal relationship or a fact, is to be punished with prison sentence of up to one year or with a fine of up to 720 day's rates. c. The production of false instruments Criminal sanctions Art. 223 Criminal Code (Forgery of Instruments) (1) Who produces a false instrument or forges a true instrument with the intent that the instrument be used in legal dealings in order to prove an entitlement, a legal relationship or a fact, is to be punished with prison sentence of up to one year or with a fine of up to 720 day's rates. d. The use of forged or counterfeit supporting documents Criminal sanctions Art. 228 Criminal Code (1) Who causes an entitlement, a legal relationship or a fact to be falsely recorded in an Austrian public instrument or that a false public certification is attached to something, is to be punished with prison sentence of up to one year or with a fine of up to 720 day's rates, if he acts with the intent that the instrument be used in legal dealings in order to prove an entitlement, a legal relationship or a fact or that the thing is used in legal dealings. (2) Likewise is to be punished, who uses a false Austrian public instrument produced in good faith in legal dealings in order to prove an entitlement, a legal relationship or a fact if he or a third person intentionally caused the instrument to be false, or who uses something to which a false public certification has been attached in good faith in legal dealings, if the false attachment has been caused intentionally by him or a third person. Source: Federal Ministry of the Interior.</p>

		<p>2. Art. 112 Aliens Police Act - Sanctions against carrying companies (1) Who as carrying entrepreneur 1. has allowed an alien without a travel document and without the necessary entitlement to enter Austria (Art. 111 para 1) or 2. has not fulfilled his obligations under Art. 111 para 2 or 3, commits an administrative offence and is to be punished with a fine ranging from EUR 5,000 to EUR 15,000. (2) A carrying entrepreneur is not to be punished under para 1, if the alien concerned is granted the status of refugee or of subsidiary protection under the Asylum Act 2005 or if it is determined that the removal of the alien is not admissible for the grounds stated in Art. 45a para 1 or Art. 50 para 1. Notes on para 1: This provision meets the requirements of Art 26 para 2 Convention implementing the Schengen Agreement respectively of Art 4 para 1 of the Directive 2004/82/EC. If a carrying entrepreneur brings an alien without a travel document or the necessary visa into Austria over the external border in violation of his duty to control documents under Art. 111 para 1, this constitutes an administrative offence under Art. 112 para 1 subpara 1. In assessing whether the carrying entrepreneur is punishable is has to be taken into account whether the carrying entrepreneur could have avoided the illegal transport by conducting adequate control measures. Accordingly, violations of the obligation under Art. 111 para 1 are not punished if the transportation of the alien without the necessary travel documents could not have been avoided exercising adequate and suitable control measures: Art. 111 para 1 Aliens Police Act - Obligations of Carrying Entrepreneurs states: Carrying entrepreneurs who transport persons over the external border to Austria by air or on the water or by an international line of bus transportation, are obliged to take all necessary measures to ascertain that the person possesses a travel document necessary for the entry into the federal territory and if necessary an entry permit. This provision meets the requirements of Art. 26 para 1 lit b Convention implementing the Schengen Agreement, according to which carriers shall be obliged to take all the necessary measures to ensure that an alien carried by air or sea is in possession of the travel documents required for entry into the territories of the Contracting Parties. In the light of the principle of proportionality the carrier is required to take adequate, suitable (effective) control measures in order to avoid violations of the passport and visa obligation within the meaning of Art. 15 and to meet their obligations under Art. 111 para 1. With respect to transportations of aliens over the internal borders (land border or Schengen flight) the rules of Art. 111 on the obligations of carriers are not applicable, because these expressly require a transportation over the external border or the existence of a border control authority. In particular, the forgery of documents that may not be recognized by an "interested layman" involves violations that may not be avoided, but require the use of special instruments by experts. However, the transportation of aliens may in any case be avoided if in the travel document a required entry visa is missing or has been expired or if travel documents are not valid any more according to international agreements or international usages. A carrier who has carried an alien by air without a travel document over the external border to Austria, may avoid administrative punishment if he shows that the alien at the time of the latest possible control by the carrier (e.g. last-gate-checks during boarding) still possessed the required travel documents and has disposed of these instruments only at a later point in time. This can be shown by the production of a copy of the travel document or of the section of the boarding pass kept by the carrier, on which in the course of the last-gate-check the existence of the required travel documents has been noted in handwriting. Likewise, a carrier is not punished if he can show that the alien has been put on the list of</p>
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			<p>passengers using another identity than in the course of the entry control at the external border. This can be shown by the production of the list of passengers in connection with a copy of the travel documents originally used by the alien. An exception applies with respect to citizens of the European Union (citizens of the EEA and Swiss citizens have an equal status under respective agreements) and privileged third-country nationals (see the definitions in Art 2 para 4 subpara 11) due to Art. 5 para 4 of the Free Movement Directive: These must be given every reasonable opportunity at the entry control, if they do not have the necessary travel documents or, if required, the necessary visas, to obtain the necessary documents or have them brought to them within a reasonable period of time or to corroborate or prove by other means that they are covered by the right of free movement and residence. Therefore, if an EEA citizen, a Swiss citizen or a privileged third-country national may show his/her identity and nationality with other documents (e.g. driving licence), he/she may enter the federal territory also without a travel document. In this case, the sanctions against carriers under Art. 112 para 1 do not apply. Notes on para 2: It should be stressed that only in airport proceedings under Art 31f Asylum Act the penal administrative decision under Art. 112 is not issued before the final decision on the asylum application. In all other cases, the penal decision is issued immediately, but may be lifted later on which means that the fine is refunded. Notice regarding the conclusion of the asylum proceedings: In order to facilitate the conclusion of the penal proceedings under Art. 112, the regional directorate of the Federal Office for Immigration and Asylum that rejects the asylum application of the alien will inform the police administration of the province in which the airport of entry is situated, so that it may take measures against the air carrier in relation to the rule of the European Union regarding carrier liability. Source: Federal Ministry of the Interior.</p> <p><b>3.</b> Please see document attached.</p>
	<p><b>Belgium</b></p>	<p>Yes</p>	<p><b>1. a)</b> In Belgium, the use of a false document is subject to criminal sanctions on the basis of articles 196 et seq. of the Penal Code.</p> <p>Article 196 of the Penal Code stipulates that :</p> <p>“Shall be punished by imprisonment of 5 to 10 years the other persons who have committed forgery of authentic and public documents, and any person who has committed forgery of a commercial document, of a banking document, or of private accounts,</p> <p>Either by means of false signatures,</p> <p>Or by counterfeit or alteration of records or signatures,</p> <p>Or by the fabrication of conventions, provisions, obligations or discharges or by insertion thereof in the documents afterwards,</p> <p>Or by the addition or alteration of clauses, declarations or facts that these documents aimed at receiving and establishing.”</p>

Furthermore, article 213 of the Penal Code provides sanctions for the use of false documents: “the enforcement of sentences against those who have used counterfeit, fabricated or falsified currency, instruments, coupons, bills, seals, stamps, proof marks, marks, telegraphic dispatches or documents, will only take place if these persons have used the false instrument with fraudulent intent or with the intention of causing injury”.

b) Strictly speaking, there is no article that provides sanctions for the provision of a false document. However, it is worth mentioning that any person who has contributed to facilitating the commission of the offence of production or use of false instruments could fall under the criminal participation regime.

Other provisions are also applicable, such as those on the facilitation of irregular entry, transit or residence or smuggling of human beings (this remark is also valid for questions a. and c. It always depends on the factual circumstances).

It is worth mentioning that there is a provision dealing with the handing over of (unfalsified) documents for fraudulent use, that is to say article 199bis of the Penal Code: “Shall be punished by imprisonment of 8 days to 6 months and a fine of 26 to 500 euros, or one of these sanctions only, anyone who, with fraudulent intent, uses, hands over to a third party or accepts from a third party, a passport, a travel document, an identity card or another document serving as such, as well as the forms used for their issuing, or who does not respect the prohibitions and restrictions that are included in those (...)”

c) Article 198 of the Penal Code stipulates: “anyone who has counterfeited or falsified a passport, (a document covered by the law on arms), or a work booklet, or has used a counterfeit or falsified passport, (a document covered by the law on arms) or work booklet, shall be punished by imprisonment of 1 month to 1 year.” What’s more, article 199 of the Penal Code punishes by imprisonment of 8 days to 6 months anyone who has taken a false name in a passport, (a document covered by the law on arms), or a work booklet, or who has contributed as a witness to have these instruments issued under the false name.

Furthermore, article 199bis of the Penal Code stipulates that:

“Shall be punished by imprisonment of 8 days to 6 months and a fine of 26 to 500 euros, or one of these sanctions only,  
1° Anyone who, with fraudulent intent, uses, hands over to a third party or accepts from a third party, a passport, a travel document, an identity card or another document serving as such, as well as the forms used for their issuing, or who does not respect the prohibitions and restrictions that are included in those;

2° Anyone who does not comply, within the time set, with a decision from the competent authority to withdraw a passport or a document serving as such”.

d) Article 207 of the Penal Code stipulates that anyone who has falsified a certificate, as well as anyone who has used a

falsified, forged or fabricated certificate in the circumstances enumerated in the articles 203, 204, 205 and 206, shall be punished with the penalties provided by these articles and according to the distinctions they make. The text mostly targets those who have fabricated, using the name of a civil servant or a public officer, certificates of any kind which can jeopardize public or private interests. They shall be punished by imprisonment of 6 months to 5 years, and can also be punished by disqualification (in accordance with article 33 of the Penal Code). Furthermore, if the certificate is fabricated using the name of an individual, the culprit shall be punished by imprisonment from 2 months to 1 year.

(See Belgian Penal Code:

[http://www.ejustice.just.fgov.be/cgi\\_loi/loi\\_a1.pl?language=fr&caller=list&cn=1867060801&la=f&fromtab=loi&sql=dt=%27code%20penal%27&tri=dd+as+rank&rech=1&numero=1](http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?language=fr&caller=list&cn=1867060801&la=f&fromtab=loi&sql=dt=%27code%20penal%27&tri=dd+as+rank&rech=1&numero=1))

**2.** The Law of 15 December 1980 on the entry, residence, settlement, and removal of foreign nationals, punishes by a fine of 3.000 euros per transported passenger, the carriers (air, sea, road) who have transported towards Belgium at least 5 passengers, who do not have the documents required by article 2 (of the above mentioned law), without having taken the necessary precautions to ensure that these passengers have the necessary documents (...).

Article 74/4/bis of the Law of 15 December 1980 stipulates that an administrative fine of 5.000 euros can be imposed on carriers (air, sea, road) who do not respect the provisions referred to in Title IIIbis of the law on “Obligations of carriers regarding the access of foreigners to the territory”. As stipulated in §1 of article 74/4/bis, the fine can be imposed on:

“1° Public or private air carrier, for any passenger that it transports towards Belgium, who does not have the documents required by article 2;

2° Public or private sea carrier, for any passenger that it transports towards Belgium, who does not have the documents required by article 2;

3° Public or private carrier of persons who provides international road liaisons by bus, coach, or minibus - with the exception of border traffic – for any passenger that it transports towards Belgium, who does not have the documents required by article 2;

4° Public or private air carrier, for any passenger it transports to Belgium on the occasion of a journey to a third country, who does not have the documents required to transit through Belgium through the airport area or to enter this third country;

			<p>5° Public or private sea carrier, for any passenger it transports to Belgium on the occasion of a journey to a third country, who does not have the documents required to enter this third country</p> <p>6° Public or private carrier of persons who provides international road liaisons by bus, coach, or minibus - with the exception of border traffic - for any passenger that it transports towards Belgium on the occasion of a journey to a third country, who does not have the documents required to transit through Belgium or to enter this third country. (...)”</p> <p>The law refers to transported passengers who do not have the required documents, not to those using false documents.</p> <p>(See the Law of 15 December 1980:  <a href="http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&amp;la=F&amp;cn=1980121530&amp;table_name=loi">http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&amp;la=F&amp;cn=1980121530&amp;table_name=loi</a>).</p> <p>3. The statistics could not be obtained within the set time. It is worth mentioning that the Belgian databanks do not distinguish between the use of false instruments in the framework of an issue linked to smuggling of human beings and the use of false instruments for other criminal activities.</p>
	<b>Croatia</b>	Yes	<p><b>1. Type of “offence”</b></p> <p>All the cases are deemed to be criminal offenses according to the Croatian Criminal Code 2013 and attracted penalties.</p> <p>a. Individuals using a false instrument Prescribed by the Article 278 of the Criminal Code (criminal offense of Forgery of documents) unlawfulness of using a false or altered genuine document attracts the sentence for the perpetrator of up to three years of imprisonment.</p> <p>b. Illegality of a purchasing fake or altering a genuine document with the aim of using such a document as a genuine has been regulated by Article 278 of the Criminal Law (criminal offense of Forgery of documents), which prescribes that the perpetrator could be punished by imprisonment up to three years.</p> <p>Misdemeanor</p> <p>(Prohibition of helping an alien in illegal crossing of the state border is regulated by Article 43. and misdemeanor sanctions in Article 225. of the Aliens Act which stipulates that the offender for each aided alien could be sentenced for up to 60 days of imprisonment and with the fine of 23,000.00 Kuna).</p>

			<p>c. It has been prescribed by the Article 278. of the Criminal Code under criminal offense of Forgery of documents as pervious two acts, which stipulates that the perpetrator could be punished by imprisonment of up to three years.</p> <p>If the said criminal offense is committed by a criminal association a criminal sanction is prescribed by Article 329. of the Criminal Code which stipulates that in this case the perpetrator could be punished by imprisonment from 6 months to 5 years.</p> <p>d. Unlawfulness of the use of false or altered genuine document has been prescribed by Article 278. of the Criminal Law, which stipulates that the perpetrator could be punished by imprisonment up to three years.the Criminal Law, which stipulates that the perpetrator could be punished by imprisonment up to three years.</p> <p>2. For this act the liability of the carrier is prescribed in Article 41 and the misdemeanor sanction is prescribed by Article 225 of the Aliens Act, which stipulates that the carrier could be subjected to a fine in the amount of 23 000 Kuna per transported alien.</p> <p>3. During 2015, the border police at 315 people found 312 forged documents and 38 others people documents as compared to 2014. it was reduction of 4.5% . Passports are the most forged documents, which during 2015 were revealed 153, and ID cards, which is in the reporting period were revealed 49. It should be particularly noted that during 2015 it has been discovered 10 forged residence permits. For this type of document it is necessary to continue to pay special attention because it is a document that facilitates the entry, movement and residence in the EU, which has become desirable for illegal migrants and forgers - please see attached document for more details.</p>
	<b>Cyprus</b>	Yes	<p>1. a) Any person who forges any document is guilty of an offence and is liable to 3 years imprisonment (article 335 of Cap.154). Any person who forges judicial or official documents is guilty of an offence and is liable to 10 years imprisonment (article 337 of Cap.154). Any person who utters false documents is liable to the same punishments as if he forged the documents himself (article 339 of Cap.154). b) Assisting an illegal immigrant to enter, pass through or remain illegally in Cyprus, is an offence punishable with 8 years imprisonment or with CYP20.000 or both (article 19A of Cap.105). Also, under article 20 of Cap.154, every person who does or omits to do an act for the purpose of enabling another to commit the offence, or aids or counsels or procures a person to commit an offence, shall be liable to the same sentence as if he himself committed the offence. Any person who obtains registration by false pretences is liable to 1 year imprisonment (article 305 of Cap.154). c) See answer 1.b. d) See answer 1.b.</p> <p>2. According to the Council Directive 2001/51/EC, Article 4, and National Legislation Law 146(I) 2007 Article 4 and 5, it is provided that administrative sanctions may be imposed to Carrying Companies. In cases where Carrying Companies</p>

			<p>allow passengers to board without possessing the necessary travel documents and visas an administrative sanction of 3000â, Ñ is imposed to the carriers liability for each passenger.</p> <p><b>3.</b> The number of cases of detected false/falsified travel documents at entry/exit points for the year 2014 was 159 and for 2015 was 97. Data concerning prosecution procedures and convictions cannot be extracted by the platform due to the fact that they are registered in the overall statistics in relation with Aliens and Immigration Law and not specifically for the particular offences of false/falsified documents.</p>
	<p><b>Estonia</b></p>	<p>Yes</p>	<p><b>1.</b> a. - Submission of false information or falsified documents with the purpose of obtaining a legal basis for an alien to stay in the territory of Estonia or a member state of the Schengen Convention is punishable by a fine of up to 300 fine units. - Use of a knowingly counterfeit document, seal or blank document form with the intention of obtaining rights or release from obligations is punishable by a pecuniary punishment or up to three years' imprisonment. - Knowing obtaining, use or granting of permission to use a falsified important identity Document is punishable by a pecuniary punishment or up to three years' imprisonment. - Use of an important identity document issued in the name of another person or granting of permission to another person to use an important identity document issued in his or her own name, with the intention of obtaining rights or release from obligations, is punishable by a pecuniary punishment. b. - Aiding the stay of aliens in Estonia without a legal basis for the purpose of proprietary benefits is punishable by a pecuniary punishment or up to one year of imprisonment. - Illegal transportation of an alien across the state border or temporary border line of the Republic of Estonia is punishable by a pecuniary punishment or up to three years' imprisonment. c. - Counterfeiting a document, seal or blank document form on the basis of which it is possible to obtain rights or release from obligations is punishable by a pecuniary punishment or up to one year of imprisonment. - Falsification of an important identity Document is punishable by a pecuniary punishment or up to three years' imprisonment. d. The sanctions listed under point a are also eligible in this matter.</p> <p><b>2.</b> A transporter who transported or whose representative transported to the Estonian border an alien who, upon arrival at the Estonian border, lacked a legal basis for temporary stay or residence in Estonia or a document necessary for crossing the border, is required to transport an alien who is to be returned from the Estonian border, back to the same place where an alien boarded the means of transport of the transporter, or back to the country of location of an alien. Upon a failure of an alien to compensate for the costs of the compulsory enforcement of an obligation to leave and of the stay in the detention centre and police detention house relating to an alien, a transporter is required to compensate for the specified costs but not more than 32,000 euros. A direct delivery, by a natural person engaged in transport operations, of an alien who has no legal basis for the stay in Estonia or in the transit zone to the state border of Estonia, transit zone or temporary borderline is punishable by a fine of up to 300 fine units.</p>

			<p><b>3.</b> Statistics added as supporting Document. Please note that not all criminal offenses listed are migration related as the use of falsified documents is not migration specific. Also be aware that based on the amendments of legal acts the statistics of 2014 and 2015 may not be comparable.</p>
+	<b>Finland</b>	Yes	<p><b>1.</b> From the Criminal code of Finland (39/1889): Question 1. a. Chapter 33 Section 1 - Forgery (769/1990) (1) A person who prepares a false document or other item or falsifies such a document or item in order for it to be used as misleading evidence or uses a false or falsified item as misleading evidence shall be sentenced for forgery to a fine or imprisonment for at most two years. (2) An attempt is punishable. (514/2003) Section 2 - Aggravated forgery (769/1990) (1) If in the forgery (1) the item that is the object of the offence is an archival document stored by an authority or a general register kept by an authority and such a document or register is important from a general point of view, or the item otherwise has a particularly significant probative value, or (2) the offender uses technical equipment procured for the commission of forgery offences or otherwise acts in a particularly methodical manner and the forgery is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated forgery to imprisonment for at least four months and at most four years. (2) An attempt is punishable. (514/2003) Section 3 - Petty forgery (769/1990) If the forgery, when assessed as a whole, with due consideration to the nature of the item or to the other circumstances connected with the offence, is to be deemed petty, the offender shall be sentenced for petty forgery to a fine. Section 4 - Possession of forgery materials (514/2003) A person who without acceptable reason (1) receives, procures, transports or possesses a false or falsified piece of evidence, or (2) prepares, receives, procures, sells, transfers or possesses an item or a device that can justifiably be suspected of being primarily used in the commission of forgery offences shall be sentenced for possession of forgery materials to a fine or to imprisonment for at most six months. b. Chapter 17 - Offences against public order (563/1998) Section 8 - Arrangement of illegal immigration (146/2014) (1) A person who (1) brings or attempts to bring to or transport through Finland a foreigner without a passport, visa, residence permit or other document comparable to a passport, that is necessary for entry into the country,(2) brings or attempts to bring to or transport through Finland a foreigner whose document referred to in paragraph 1 is false, forged, issued to another person or received from an authority on the basis of essential information that is false or misleading, or by bribing the authority or violent resistance of the authority, (3) arranges or, as an intermediary, provides transportation for a foreigner referred to in paragraph 1 or 2 to Finland, or (4) gives to another person a document referred to in paragraph 2 for use in entry into the country, shall be sentenced for arrangement of illegal immigration to a fine or imprisonment for at most two years. (2) An act which, when taking into account in particular the humanitarian motives of the person committing it or his or her motives relating to close family relations, and the circumstances pertaining to the safety of the foreigner in his or her home country or country of permanent residence, and when assessed as a whole, is to be deemed committed under vindicating circumstances, does not constitute arrangement of illegal immigration. Section 8(a) - Aggravated arrangement of illegal immigration (650/2004) If, in the arrangement of illegal immigration, (1) grievous bodily harm, a serious illness or a state of mortal danger or comparable particularly grave suffering is intentionally or through gross negligence inflicted on another person or (2) the</p>

offence has been committed within the framework of an organized criminal group referred to in Chapter 6, section 5, subsection 2 (564/2015) and the offence is aggravated also when assessed as whole, the offender shall be sentenced for aggravated arrangement of illegal immigration to imprisonment for at least four months and at most six years. c. (Refer to the answer a, paragraphs 1-4) d. Chapter 16 - Offences against the public authorities (563/1998) Section 5 'Giving false identifying information (563/1998) A person who in order to mislead a public authority provides a false name or otherwise provides false or misleading information on his or her identity, or for this purpose uses another person's identity card, passport, driver's license or other such certificate, shall be sentenced for giving false identifying information to a fine or to imprisonment for at most six months. Section 6 - Fine deception (808/2007) A person who in order to obtain economic benefit provides a public authority, for the purpose of imposing a fine, essentially false or misleading information on his or her income, maintenance liability or other circumstance affecting his or her solvency, shall be sentenced for fine deception to a fine or to imprisonment for at most three months. Section 7 - Registration offence (563/1998) (1) A person who (1) in order to cause a legally relevant error in a public register kept by a public authority, provides false information to that authority, or (2) in order to gain a benefit for himself or herself or another person, or in order to cause damage to another person, takes advantage of an error caused in the manner referred to in paragraph (1), shall be sentenced for a registration offence to a fine or to imprisonment for at most three years. (2) An attempt is punishable. Section 8 - Providing false documents to a public authority (563/1998) (1) A person who provides a public authority with a legally relevant false written document or a comparable technical recording or, after having produced such a document or recording, gives it to another person to be used for this purpose, shall, unless a more severe penalty has been provided elsewhere in law for the act, be sentenced for providing false documents to a public authority to a fine or to imprisonment for at most six months. (2) Also a person pursuing an activity under the specific supervision of an authority, the representative or employee of such a person, and an auditor of the corporation under supervision, who during a statutory inspection or when otherwise fulfilling a statutory reporting duty provides the supervising authority with legally relevant false oral information, shall be sentenced for providing false documents to a public authority.

**2. Carrier's supervisory and disclosure obligation** According to Section 173 of the Aliens Act (301/2004), a carrier must ensure that any alien whom it brings into Finland and who is not an EU citizen or comparable must hold the travel document required for entry into the country, as well as any required visa or residence permit. Section 174 of the Aliens Act states that the driver of a vehicle, the master of a vessel or aircraft, or the representative of the carrier on board another vehicle is obliged to ensure that no-one who is not entitled to enter Finland enters the country without the permission of the border control authorities. The master of a vessel must give the border control authorities advance notification of any stowaway detected on board. Sections 19 and 20 of the Act on the Processing of Personal Data by the Border Guard (579/2005) define the disclosure obligation that applies to vehicle drivers and carriers. In accordance with Section 19 of the aforementioned Act, the master of a vessel must provide the border control authorities at either the entry or exit point with information about the crew, passengers and other people aboard the vessel, either as a passenger and

crew list or in another acceptable format. This information can be submitted with the aid of a technical interface. The passenger and crew list should show every person's forename, surname, date of birth, gender and nationality. It should also show the arrival and departure point of the vessel or craft, as well as its nationality and registration. Carrier's infringement fine If a carrier fails to comply with the supervisory obligation laid down in Section 173 of the Aliens Act or the disclosure obligation laid down in Section 20 of the Act on the Processing of Personal Data by the Border Guard, the carrier will be liable to pay an infringement fine (carrier's infringement fine). The fine for failure to comply with Section 173 is EUR 3,000 per person transported. The fine for failure to comply with Section 20 of the Act on the Processing of Personal Data by the Border Guard is EUR 3,000 for each journey for which passenger information has either not been submitted at all or is incomplete or incorrect. Also according the API-directive COUNCIL DIRECTIVE 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data, Article 4 Sanctions, 2 This Directive shall not prevent Member States from adopting or retaining, for carriers which infringe very seriously the obligations arising from the provisions of this Directive, other sanctions, such as immobilisation, seizure and confiscation of the means of transport, or temporary suspension or withdrawal of the operating licence.

**3. 1. Counterfeit / false docs: 2014 2015**

a) Travel documents (pasports etc)

- Passports 106 77
- Visas/Residence permits 87 93
- ID's 98 188
- Stamps 179 80

b) N/A

c) N/A

d)

Other counterfeit docs 36 122

			<p>Pseudo/Fantasy 9 3</p> <p>2. Carrier's infringement fine:</p> <ul style="list-style-type: none"> <li>• Carrier's infringement fine confirmed: 168 148</li> <li>• Carrier's infringement fine not confirmed: 84 150</li> </ul>
	<b>France</b>	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	<b>Germany</b>	Yes	<p><b>1. Question 1:</b></p> <p>a. Individuals using a false instrument</p> <p>This offence is the object of § 267 StGB (Strafgesetzbuch - German criminal code) which sanctions the forgery or falsification of a document or documents as well as the use of a forged or falsified document or documents. § 267 StGB imposes up to five years of imprisonment or fine. It is a criminal sanction.</p> <p>The use of false documents is also prohibited by § 95 II Nr. 2 AufenthG (Aufenthaltsgesetz – German residence act). This paragraph is also a criminal sanction especially created for people using falsified or forged documents to enter MS countries or fraudulently apply for an extension to stay in their country.</p> <p>b. The provision and/or procurement of false instrument</p> <p>This offence is the object of § 267 StGB (Strafgesetzbuch - German criminal code) which sanctions the forgery or falsification of a document or documents as well as the use of a forged or falsified document or documents. § 267 StGB imposes up to five years of imprisonment or fine. It is a criminal sanction.</p> <p>The provision and/or procurement of false instrument is also prohibited by § 96 I Nr. 1 lit.b) AufenthG (German residence act). This sanction is also a criminal sanction.</p> <p>c. The production of false instruments</p>

			<p>This offence is the object of § 267 StGB (Strafgesetzbuch - German criminal code) which sanctions the forgery or falsification of a document or documents as well as the use of a forged or falsified document or documents. § 267 StGB imposes up to five years of imprisonment or fine. It is a criminal sanction.</p> <p>d. The use of forged or counterfeit supporting documents</p> <p>This offence is the object of § 267 StGB (Strafgesetzbuch - German criminal code) which sanctions the forgery or falsification of a document or documents as well as the use of a forged or falsified document or documents. § 267 StGB imposes up to five years of imprisonment or fine. It is a criminal sanction.</p> <p>The use of false documents is also prohibited by § 95 II Nr. 2 AufenthG (Aufenthaltsgesetz – German residence act). This paragraph is also a criminal sanction especially created for people using falsified or forged documents to enter MS countries or fraudulently apply for an extension to stay in their country.</p> <p><b>2. Question 2:</b> Â§ 63 III AufenthG (German residence act) contains a administrative sanction for Carrying companies which bring passengers illegally to Germany by allowing them to board flights, trains, ferries and coaches using forged our counterfeit travel or identity documents.</p> <p><b>3. Question 3:</b> No statistics available.</p>
	<b>Hungary</b>	Yes	<p><b>1. a)</b> Use of false Travel Document/National ID card etc. to enter MS countries or fraudulently apply for an extensions to stay in their country</p> <p>Answer:</p> <p>Forgery of Public Documents</p> <p>Act C of 2012 on the Criminal Code Section 342.</p> <p>(1) Any person who:</p> <p>a)prepares a forged administrative document or falsifies the contents of an administrative document;</p>

b) uses a falsified or forged administrative document or an administrative document issued under the name of another person;

c) collaborates in the inclusion of false data, facts or declarations in an administrative document regarding the existence, changing or termination of a right or obligation; is guilty of a felony punishable by imprisonment not exceeding three years.

(2) Any person who engages in preparations for the forging of administrative documents as defined in Paragraph

a) or b) of Subsection (1) is guilty of misdemeanor punishable by imprisonment not exceeding one year.

(3) Any person who performs the forging of administrative documents under Paragraph c) of Subsection (1) by way of negligence shall be punishable for a misdemeanor by custodial arrest

b) In order to assist the illegal crossing of someone into their state (migrant smuggling)

Answer:

Smuggling of Human Beings

Act C of 2012 on the Criminal Code

Section 353.

(1) \* Any person who provides aid to another person for crossing state borders in violation of statutory provisions is guilty of a felony punishable by imprisonment between one to five years.

(2) \* The penalty shall be imprisonment between two to eight years if illegal immigrant smuggling is carried out:

a) for financial gain or advantage;

b) involves several persons for crossing state borders; or

c) by destroying or vandalizing the barrier or the means deployed for the protection of State borders.

(3) \* The penalty shall be imprisonment between five to ten years if illegal immigrant smuggling is carried out:

- a) by tormenting the smuggled person;
- b) by displaying a deadly weapon;
- c) by carrying a deadly weapon;
- d) on a commercial scale; or
- e) in criminal association with accomplices.

(4) \* The penalty shall be imprisonment between five to fifteen years if:

- a) illegal immigrant smuggling as referred to in Paragraph a) of Subsection (3) is committed in the manner defined in Paragraphs b)-e) thereof;
- b) illegal immigrant smuggling as referred to in Paragraph b) of Subsection (3) is committed in the manner defined in Paragraphs a), c)-e) thereof.

(5) \* Any person who is engaged in organizing or supervising the criminal offense defined in Subsection (3) or (4) is punishable by imprisonment between ten to twenty years.

(6) \* Any person who engages in preparations for illegal immigrant smuggling is punishable by imprisonment not exceeding three years.

c) Answer:

Aiding in Illegal Residence

Act C of 2012 on the Criminal Code

Section 354.

(1) Any person who provides aid for financial gain to a foreign national to reside unlawfully in the territory of:

a) any Member State of the European Union;

b) any State that is a party to the Agreement on the European Economic Area; or

c) any other country whose citizens are enjoying the same treatment as nationals of States who are parties to the Agreement on the European Economic Area;

if such foreign national is not a citizen of any of these states, is guilty of misdemeanor punishable by imprisonment not exceeding two years, insofar as the act did not result in a more serious criminal offense.

(2) Any person who provides aid for financial gain to a foreign national to reside unlawfully in the territory of Hungary shall be punishable in accordance with Subsection (1), insofar as the act did not result in a more serious criminal offense.

d) Forgery of Public Documents or Use of a Forged Private Document

Act C of 2012 on the Criminal Code

Section 342 and Section 345.

(1) Any person who:

a) prepares a forged administrative document or falsifies the contents of an administrative document;

b) uses a falsified or forged administrative document or an administrative document issued under the name of another person;

c) collaborates in the inclusion of false data, facts or declarations in an administrative document regarding the existence, changing or termination of a right or obligation;

is guilty of a felony punishable by imprisonment not exceeding three years.

(2) Any person who engages in preparations for the forging of administrative documents as defined in Paragraph a) or b) of Subsection (1) is guilty of misdemeanor punishable by imprisonment not exceeding one year.

(3) Any person who performs the forging of administrative documents under Paragraph c) of Subsection (1) by way of negligence shall be punishable for a misdemeanor by custodial arrest.

#### Use of a Forged Private Document

#### Section 345

Any person who uses a falsified or forged private document or a private document with untrue contents for providing evidence for the existence, the changing or termination of a right or obligation, is guilty of a misdemeanor punishable by imprisonment not exceeding one year.

#### Criminal Offenses with Authentic Instruments

#### Section 346 \*

(1) Any person who - as regards any authentic instrument which does not belong to him or which is not exclusively his own:

- a) unlawfully acquires such authentic instrument from another person, without the consent of such person;
- b) unlawfully destroys or damages such authentic instrument;
- c) unlawfully commandeers or conceals such authentic instrument from its rightful holder;

is guilty of a misdemeanor punishable by imprisonment not exceeding two years.

(2) Any person who receives or transfers an authentic instrument for unlawful financial gain is punishable in accordance with Subsection (1), insofar as the act did not result in another criminal offense.

			<p>(3) Any person who perpetrates the act defined in Subsection (1) in respect of a private document in order to gain unlawful advantage or to cause unlawful disadvantage is guilty of a misdemeanor punishable by imprisonment not exceeding one year.</p> <p>2. Q2. Answer: Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals Chapter VI Vested Responsibilities RRTN Section 69. (1) Carriers providing travel accommodations to third-country nationals by means of air, water or scheduled road transport shall be required to check the travel document and visa of their passengers before boarding for travelling to Hungary or to another country through the territory of Hungary to ensure that they have travel documents required for entry or for transit, or visas for an intended stay of no more than ninety days. (2) The carrier transporting any third-country national by means of air, water, road or railway transport shall provide for the return of such third-country national to the country of departure or to the country which is liable to accept him/her: a) if its passenger is refused admission to Hungary for lacking any of the requirements specified by law; b) if its passenger is refused admission to another country and is turned back to Hungary; or c) if the carrier to which the passenger was scheduled to be transferred refused to admit the passenger on his means of transport. (3) If return cannot be promptly executed, the carrier in question shall bear all costs incurred in connection with the stay of the third-country national until his/her return. (4) When a third-country national is refused admission and the carrier disputes its obligation to return the person in question or to finance his/her stay, the immigration authority shall adopt a formal resolution to order the carrier to comply. (5) For any failure to comply with the obligation specified in Subsection (1) as set out in specific other legislation, a penalty for the protection of public policy shall be imposed upon the carrier in question. (6) A carrier shall be exempted from the payment of penalty for the protection of public policy if able to verify of having proceeded with due care and diligence to ensure compliance with the obligation of control specified in Subsection (1).</p> <p>3. Yes, there are.</p>				
	<b>Latvia</b>	Yes	<p>1.</p> <table border="1" data-bbox="589 1106 2045 1337"> <thead> <tr> <th data-bbox="589 1106 875 1141">Type of "offence"</th> <th data-bbox="875 1106 2045 1141">Detail</th> </tr> </thead> <tbody> <tr> <td data-bbox="589 1141 875 1337"> <b>a. Individuals using a false instrument</b> </td> <td data-bbox="875 1141 2045 1337"> <i>Use of false Travel Document/National ID card etc. to enter MS countries or fraudulently apply for an extensions to stay in their country</i>  <i>Criminal Law</i>  <b>Article 275. Forgery of a Document, Seal and Stamp and Use and Sale of a Forged Document, Seal and Stamp</b> </td> </tr> </tbody> </table>	Type of "offence"	Detail	<b>a. Individuals using a false instrument</b>	<i>Use of false Travel Document/National ID card etc. to enter MS countries or fraudulently apply for an extensions to stay in their country</i> <i>Criminal Law</i> <b>Article 275. Forgery of a Document, Seal and Stamp and Use and Sale of a Forged Document, Seal and Stamp</b>
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			<p>(1) For a person who commits forgery of a document conferring rights or a release from obligations, of a seal or a stamp, as well as commits using or selling a forged document, seal or stamp, the applicable punishment is deprivation of liberty for a term up to one year or temporary deprivation of liberty, or community service, or a fine.</p> <p>(2) For a person who commits the same acts, if they have been committed for the purpose of acquiring property, or if they have been committed by a group of persons pursuant to prior agreement, or if substantial harm has been caused thereby to the State power or administrative order or to interests protected by law of a person, the applicable punishment is deprivation of liberty for a term up to three years or temporary deprivation of liberty, or community service, or a fine.</p> <p><b>Article 281. Concealing Personal Identity</b></p> <p>(1) For a person who commits concealing personal identity, in the course of residing in the Republic of Latvia without an appropriate personal identification document or using the document of another person or a forged personal identification document, the applicable punishment is temporary deprivation of liberty or community service, or a fine.</p> <p>(2) For a person who commits concealing personal identity, if it has been committed for the purposes of avoiding criminal liability or administrative liability or of committing a criminal offence, or for the purposes of helping another person to avoid criminal liability or administrative liability, the applicable punishment is deprivation of liberty for a term up to one year or temporary deprivation of liberty, or community service, or a fine.</p>
			<p><b>b. The provision and/or procurement of false instrument</b></p> <p><i>In order to assist the illegal crossing of someone into their state (migrant smuggling)</i> <i>Criminal Law</i></p> <p><b>Article 285. Illegal Movement of a Person Across the State Border</b></p> <p>(1) For a person who commits illegal movement of a person across the State border, the applicable punishment is deprivation of liberty for a term up to two years or temporary deprivation of liberty, or community service, or a fine.</p> <p>(2) For a person who commits the same acts, if they have been committed by a public official using his or her official position, the applicable punishment is deprivation of liberty for a term up to four years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property.</p> <p>(3) For a person who commits the same acts, if they have been committed by an organised group or they have resulted in serious consequences, or also who commits illegal movement of a large number of persons, that is, more than five persons at one time, across the State border, the applicable punishment is deprivation of liberty for a term up to seven years, with or without confiscation of property and with or without police supervision for a term up to three years.</p> <p>(4) For the same acts, if they have resulted in the death of two or several human beings,</p>

			<p>the applicable punishment is deprivation of liberty for a term up to ten years and with probationary supervision for a term up to three years.</p>
		<p><b>c. The production of false instruments</b></p>	<p><i>Designed to be used by organised crime groups, migrant smugglers or individuals to enter and/or reside in Member State irregularly</i>  <i>Administrative Violations Code</i></p> <p><b>Article 190.<sup>13</sup> Residing in the Republic of Latvia without a Valid Visa, Residence Permit or Valid Travel Documents</b></p> <p>In the case of residing in the Republic of Latvia without a valid visa, residence permit or valid travel documents –  a fine up to 350 <i>euro</i> shall be imposed.</p> <p><b>Section 190.<sup>14</sup> Provision of an Opportunity to Reside Illegally in the Republic of Latvia</b>  In the case of knowingly providing a person with an opportunity to reside illegally in the Republic of Latvia –  a fine in an amount from 40 <i>euro</i> up to 210 <i>euro</i> shall be imposed.  <i>Criminal Law</i></p> <p><b>Article 285.<sup>1</sup> Ensuring the Possibility of Residing Illegally in the Republic of Latvia</b>  (1) For a person who knowingly commits ensuring persons the possibility of residing illegally in the Republic of Latvia, if it has been committed by a group of persons or by a public official using his or her official position,  the applicable punishment is deprivation of liberty for a term up to one year or temporary deprivation of liberty, or community service, with deprivation of the right to take up a specific office for a term up to five years.  (2) For a person who knowingly commits ensuring persons the possibility of residing illegally in the Republic of Latvia, if it has been committed for the purpose of acquiring property or if such a possibility is ensured for two or more persons,  the applicable punishment is deprivation of liberty for a term up to three years or temporary deprivation of liberty, or community service, or a fine, with deprivation of the right to take up a specific office for a term up to five years and with or without confiscation of property.</p> <p><b>Article 285.<sup>2</sup> Ensuring in Bad Faith with a Possibility to Acquire the Right to Stay in the Republic of Latvia Legally, other Member State of the European Union, Member State of the European Economic Area or Swiss Confederation</b></p>

			<p>(1) For a person who commits provision in bad faith with a possibility to acquire the right to stay in the Republic of Latvia legally, other Member State of the European Union, Member State of the European Economic Area or Swiss Confederation, the applicable punishment is deprivation of liberty for a term up to three years or temporary deprivation of liberty, or community service, or a fine.</p> <p>(2) For a person who commits provision in bad faith with a possibility to acquire the right to stay in the Republic of Latvia legally, other Member State of the European Union, Member State of the European Economic Area or Swiss Confederation, if it has been committed for the purpose of acquiring property or if such a possibility is ensured for two or more persons, or if it has been committed by a group of persons, the applicable punishment is deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property.</p> <p><b>d. The use of forged or counterfeit supporting documents</b></p> <p><i>The use of supporting documents to support fraudulent applications for genuine travel documents, visas or extensions to permission to remain in a Member State (FOGs – Fraudulently Obtained Genuine travel documents/visas/national ID cards etc.)</i></p> <p><i>Criminal Law</i></p> <p><b>Article 275.<sup>1</sup> Acquisition of a Personal Identification Document Using Data of Another Person</b></p> <p>For a person who commits the acquisition of a personal identification document, using data of another person, the applicable punishment is deprivation of liberty for a term up to one year or temporary deprivation of liberty, or community service, or a fine.</p>
<p><b>2. Administrative Violations Code defines the sanction only for carriage of third country nationals without necessary travel documents to Latvia.</b></p> <p>Article 114.2 Carriage of Persons to the Republic of Latvia without Travel Documentation</p> <p>In the case of the carriage of citizens of such state that is not a Member State of the European Union or European Economic Area, from such states to the Republic of Latvia, if the referred to persons do not have the necessary travel documentation to cross the border of the Republic of Latvia and if the carrier has performed it by sea, air or land transport –</p> <p>a fine shall be imposed on a natural or legal person in an amount from 3000 euro up to 5000 euro for every person carried.</p>			

Section 114.3 Failure to Provide Passenger Information and Provision of Incomplete or Incorrect Information

In the case of failure to provide the requested passenger information, provision of incomplete or incorrect information to the State Border Guard, if done by a carrier, who performs carriage by air transport from a country that is not a Member State of the European Union or European Economic Area to the Republic of Latvia –

a fine shall be imposed on the carrier –a natural or legal person – in an amount from EUR 3100 up to EUR 5100.

3.

<i>Criminal Law</i>				
Article of Criminal law	Year	Investigations (cases)	Prosecutions (cases)	Convictions
Article 275	2014	125	86	Not available
	2015	95	62	Not available
<p><b>! With regard to the statistical data for Article 275 of the Criminal Law it must be noted that this article is applied to cases of forgery of all sorts of documents therefore it is not possible to indicate how many investigations were started specifically for the forgery of travel documents/national ID cards etc. Data in this table regarding Article 275 of the Criminal Law is provided by the State Border Guard therefore it will reflect the number of third-country nationals to whom Article 275 of the Criminal Law was applied.</b></p> <p><b>The total number of investigations by different state institutions in 2014 – 434 cases, in 2015 – 421 cases.</b></p>				
Article 275 <sup>1</sup>	2014	10	0	Not available
	2015	8	3	Not available
Article 281	2014	2	1	Not available
	2015	11	8	Not available
<p><b>! With regard to the statistical data for Article 281 of the Criminal Law it must be noted that this article is applied to different cases of concealing of personal identity. For the purpose of this ad-hoc query data by the State Boarder Guard is provided therefore it will reflect the number of third-country nationals to whom Article 281 of the Criminal Law was applied.</b></p> <p><b>The total number of investigations by different state institutions in 2014 – 49, in 2015 – 54.</b></p>				
Article 285	2014	20	8	Not available
	2015	39	24	Not available
Article 285 <sup>1</sup>	2014	1	0	Not available
	2015	20	9	Not available
Article 285 <sup>2</sup>	2014	11	4	Not available
	2015	11	2	Not available

+	Malta	Yes	<p>1. What criminal and/or administrative sanctions (please specify) do Member States have in place for:</p> <p>a. Individuals using a false instrument - Use of false Travel Document/National ID card etc. to enter MS countries or fraudulently apply for an extensions to stay in their country;</p> <p>Charges exist in the generic criminal code as well as specifically in the Immigration Act. If there is enough evidence the person is taken to court and prosecuted. Upon conviction removal proceedings are carried out if legally possible.</p> <p>b. The provision and/or procurement of false instrument - In order to assist the illegal crossing of someone into their state (migrant smuggling);</p> <p>Charges exist in the generic criminal code as well as specifically in the Immigration Act. If there is enough evidence the person is taken to court and prosecuted. Legislation differentiates the penalty to be imposed depending on the number of persons assisted. Upon conviction removal proceedings are carried out if legally possible.</p> <p>c. The production of false instruments - Designed to be used by organised crime groups, migrant smugglers or individuals to enter and/or reside in Member State irregularly;</p> <p>Charges exist in the generic criminal code as well as specifically in the Immigration Act. If there is enough evidence the person is taken to court and prosecuted. Legislation differentiates the penalty to be imposed depending on the number of persons assisted. Upon conviction removal proceedings are carried out if legally possible.</p> <p>d. The use of forged or counterfeit supporting documents - The use of supporting documents to support fraudulent applications for genuine travel documents, visas or extensions to permission to remain in a Member State (FOGs – Fraudulently Obtained Genuine travel documents/visas/national ID cards etc.).</p> <p>Charges exist in the generic criminal code as well as specifically in the Immigration Act. If there is enough evidence the person is taken to court and prosecuted. Upon conviction removal proceedings are carried out if legally possible.</p> <p>2. Carrier sanctions consist of fines imposed on the carrier. If the forged document is not reasonably detectable then no carrier sanction is imposed.</p> <p>3. Statistics available refer to the number of forged, counterfeit and stolen documents intercepted and the number of imposters detected.</p>
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			<table> <thead> <tr> <th></th> <th>2014</th> <th>2015</th> </tr> </thead> <tbody> <tr> <td>Forged</td> <td>32</td> <td>26</td> </tr> <tr> <td>Counterfeit</td> <td>115</td> <td>104</td> </tr> <tr> <td>Imposter</td> <td>26</td> <td>44</td> </tr> <tr> <td>Stolen</td> <td>2</td> <td>0</td> </tr> </tbody> </table>		2014	2015	Forged	32	26	Counterfeit	115	104	Imposter	26	44	Stolen	2	0
	2014	2015																
Forged	32	26																
Counterfeit	115	104																
Imposter	26	44																
Stolen	2	0																
	<b>Poland</b>	Yes	<p><b>1.</b> a. A person who uses forged, or counterfeit or altered document as authentic shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for a term of between 3 months to 5 years. This offence is penalized by Article 270 Â§ 1 of the Penal Code. Additional administrative sanction for illegal stay on the territory of Poland is an obligation to return and a fine of up to 5.000 PLN (approx. 1.190 EUR). b. A person who unlawfully transports, carries across border or sends abroad a document certifying the identity of another person shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years (Article 275 Â§ 2 of the Penal Code). c. A person who makes preparation to forge, counterfeit or to alter the document is subject to a fine, restriction of liberty or imprisonment for up to 2 years (Article 270 Â§ 3 of the Penal Code). d. A person who uses forged or counterfeit supporting documents (i.e. invitation etc.) as authentic shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for a term of between 3 months to 5 years (Article 270 Â§ 1 of the Penal Code).</p> <p><b>2.</b> Carriers are subject to standard administrative sanctions referred to in Article 26 (1) of the Convention implementing the Schengen Agreement and specified in detail by the provisions of Directive 2001/51/EC of 28 June 2001 which supplement the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985. However, it should be noted that these sanctions (fines) do not refer to cases in which foreigners use falsified documents. Such actions are subject to criminal penalties (in accordance with Article 264 Â§ 3 of the Polish Penal Code): whoever organises the crossing of the for other persons, in violation of the relevant regulations shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years.</p> <p><b>3.</b> Number of preparatory proceedings initiated by the Border Guard: Article 270 of the Penal Code - in 2014 - 1 551, in 2015 - 2 852; Article 275 of the Penal Code - in 2014 - 42, in 2015 - 40.</p>															

	<b>Slovenia</b>	Yes	<p><b>1.</b> All the cases are deemed to be criminal offenses.</p> <p><b>2.</b> According to national legislation the carriers are obliged to carry the foreigners back to original place or country on its own costs. It is also considered to be an administrative offense (misdemeanor).</p> <p><b>3.</b> Specific data on such offenses cannot be extracted. Only general statistics on cases of document forgeries in general regardless of modi operandi is available.</p>
	<b>Spain</b>	Yes	<p><b>1.</b> a. The use of false documents (not specifically for illegal entry or stay) is sanctioned in the Penal Code with up to one year imprisonment b. Two different crimes would have to be considered in this case: -Provision of false documents (up to three years imprisonment). -Facilitation of illegal entry or stay (up to one year imprisonment, and up to eight years in qualified cases). c. The production of false documents (not specifically for those purposes) is sanctioned by the Penal Code with up to three years imprisonment. d. This would be the same case as a.</p> <p><b>2.</b> Not checking the validity of travel documents involves an administrative sanction of 5.000-10.000 per passenger, or a minimum lump sum of 750.000. If, due to the quality of the falsification, the carrier cannot be expected to detect it, no sanction can be imposed. If the carrier knowingly allows passengers to travel with false documents, there would be room for a criminal sanction.</p> <p><b>3.</b> Not available.</p>
	<b>Sweden</b>	Yes	<p><b>1.</b></p> <p>1a. That is an offence according to the Swedish Penal Code, Chapter 14;</p> <p>Section 10:</p> <p>A person who invokes a false document (falsified or counterfeit) shall, if the act jeopardizes proof, be sentenced for the use of that which was falsified as if he himself had made the falsification. The sentence could be imprisonment for at most two (2) years. If the crime is defined petty a fine or imprisonment for at most six (6) months shall be imposed. If it is considered gross; imprisonment for at least six (6) months and at most six (6) years.</p> <p>1b. Q1.b. That is an offence according to the Swedish Aliens act, Chapter 20;</p>

Section 8:

Any person who intentionally assists an alien to unlawfully enter or pass through Sweden, a Member State of the European Union or Iceland, Norway or Switzerland shall be sentenced for human smuggling to imprisonment for at most two years. If the offence is to be regarded as gross, the sentence shall be imprisonment for gross human smuggling for at least six months and at most six years. In judging whether the offence is gross, special attention shall be paid to whether the act 1 was carried out in return for compensation, 2 was carried out as part of an activity that involved a large number of persons or 3 was carried out in forms that entail mortal danger for the alien or was otherwise carried out in ruthless forms. If the offence is regarded as minor the sentence shall be a fine or imprisonment for at most six months. An attempt or preparation to commit an offence under this Section shall be adjudged according to the provisions of Chapter 23 of the Penal Code.

Section 9:

Any person who, for financial gain, plans or organises activities designed to enable aliens to travel to Sweden without passports or the permits required for entry into Sweden shall be sentenced for organisation of human smuggling to imprisonment for at most two years. If the offence is gross the sentence shall be imprisonment for gross organisation of human smuggling for at least six months and at most six years. In judging whether the offence is gross, special attention shall be paid to whether the act involves the systematic exploitation of the vulnerable situation of aliens or involves mortal danger or other ruthlessness in relation to the aliens. If the offence is regarded as minor the sentence shall be a fine or imprisonment for at most six months. Any person assisting an alien to travel to Sweden without a passport or the permits required for entry into Sweden shall be sentenced for complicity under paragraphs one to three. This provision is applicable if the accomplice realised or had fair reason to assume that the journey was organised for financial gain through a said activity.

1.c. That is an offence according to the Swedish Penal Code, Chapter 14;

Section 1:

A person who, by writing the name of another person, real or fictitious, or by deceit obtains another's signature or in other ways produces a false document or deceitfully alters or adds to a genuine document, shall, if the act jeopardizes proof, be sentenced for falsification of a document to imprisonment for at most two years.

A document is to be considered as including a protocol, contract, promissory note, certificate or other record established as evidence or otherwise important as evidence and also an identification card, ticket or similar evidential token.

Section 2:

If the crime defined in Section 1 is regarded as petty a fine or imprisonment for at most six months shall be imposed for falsifying a document. In assessing whether a crime is petty, special attention shall be paid to whether the document was of little importance, such as a cash register receipt, counter token or like proof of receipt, or the

Act was committed to aid a person to gain his right.

Section 3:

If the crime defined in Section 1 is considered gross, imprisonment for at least six months and at most six years shall be imposed for gross falsification of a document. In assessing whether the crime is gross, special attention shall be paid to whether the falsification involved a public authority's important archival document or a document of special importance in general commerce such as a bond, a share certificate or a mortgage or whether the act was in other ways of an especially harmful nature.

1.d. Depending on the circumstances one or more criminal sanctions could be applicable. First of all the same criminal sanction as mentioned in Q1a).

Criminal sanctions could also be found in the Swedish Penal Code, Chapter 15;

Section 11:

A person who gives untrue information about his identity or about other than his own affairs in a certificate or other document, or for the sake of appearances prepares a document concerning a legal document shall, if the act jeopardizes proof, be sentenced for false certification to a fine or imprisonment for at most six months. If the crime is considered gross because it involves misuse of official position or for other reasons, imprisonment for at most two years shall be imposed.

A person who invokes or otherwise uses a false document referred to in the first paragraph, shall, if the act jeopardizes proof, be sentenced, as there provided, for using a false document. (Not to be confused with the sanction in the Swedish Penal Code, Chapter 14, Section 10)

Furthermore criminal sanctions according to the Swedish Aliens act, Chapter 20;

Section 6:

A fine or, in aggravating circumstances, a sentence of imprisonment for at most six months shall be imposed on

1 a person who intentionally or through negligence does not make a report prescribed in an ordinance issued pursuant to this Act,

2 a person who knowingly supplies incorrect information or knowingly fails to mention a circumstance of importance in a report or in a case concerning an application under this Act or an ordinance issued pursuant to this Act.

Impostors/Look-alike

Since it is more and more common that genuine documents are used by “impostors”/”look-alikes” we would also like to inform about the criminal sanctions in place for that. Note that it is the same sanction for the impostor as it is for the original holder who sells or otherwise disclose the document to be abused by someone else.

Anyone who invokes a passport or identity document issued to another individual as his/her own or disclose such documents to be abused by another person in that way is convicted, if the act jeopardizes proof, for misuse of document to a fine or imprisonment for at most six (6) months or, if the crime is gross, to imprisonment for at most two (2) years. (Swedish Penal Code, Chapter 15, Section 12)

2. What administrative sanctions are applied in MS to Carrying Companies who allow passengers to board flights, trains, ferries and coaches using forged or counterfeit travel or identity documents?

The carriers are not expected to have expert knowledge about document security features/printing methods etc. but are expected to detect obvious falsifications/counterfeits (and impostors).

The administrative sanctions are found in the Swedish Aliens act, Chapter 19;

The carrier's liability for costs

Section 2:

If an alien who has come to Sweden on a ship or aircraft direct from a state that is not covered in the Schengen Convention is refused entry because the alien does not have a passport or the permits required to enter the country or the funds for his or her journey home, the carrier is liable to reimburse the State for

- 1 the cost of the alien's journey from Sweden,
- 2 the travel cost from Sweden and back again for the supervisory personnel who need to accompany the alien and
- 3 the cost of the alien's subsistence here before the refusal of entry can be enforced, if the delay in enforcement is due to the carrier.

The carrier (the owner or operator of the ship or aircraft) shall be exempted in full or in part from this liability if

- 1 the carrier shows that he or she had fair reason to assume that the alien was entitled to enter Sweden or
- 2 it appears clearly unreasonable to demand reimbursement of the cost on account of the size of the cost or other grounds.

Section 4:

The decision on the liability to reimburse costs is issued by the authority that enforces the refusal of entry.

Special Fee

Section 5:

A carrier that has not fulfilled its responsibility for controls under Chapter 9, Section 3 shall pay a special charge if the refusal-of-entry order is issued because the alien does not have a passport or the permits required for entry into Sweden and the decision has become final and nonappealable or has been enforced even though it has not entered into force.

The carrier shall, however, not pay a special charge if

			<p>1 the carrier shows that he or she had fair reason to assume that the alien was entitled to enter Sweden or</p> <p>2 it appears clearly unreasonable to levy the charge.</p> <p>Section 6:</p> <p>The special charge under Section 5 shall be set at no more than SEK 46 000 for each alien.(...)</p> <p>3. Are any statistics on investigations, prosecutions and convictions for the above mentioned offenses available? If so, can you provide figures for 2014 and, if available, 2015?</p> <p>The statistics given below is based on forgery, change of an original document, serious forgery etc.</p> <p>In this sense regarding documents used for illegal immigration (illegal trip from or to enter Sweden): Swedish or foreign passports, travel documents, alien's passports, stickers for visa and residence permits etc.</p> <p>2014 and 2015</p> <p>During these two years a total of 247 cases were initiated. Of them 105 cases were handed over from the Police Authority to a prosecutor. 91 cases were closed by the Police Authority and no further action was taken.</p> <p>In 47 cases the investigation is still open and handled by the Police Authority.</p> <p>In four cases there is an uncertainty of the outcome.</p>
	<b>United Kingdom</b>	Yes	<p><b>1.</b> Under the Identity Cards Act (2006) (1) It is an offence for a person with the requisite intention to have in his possession or under his control:</p> <p>(a) an identity document that is false and that he knows or believes to be false (b) an identity document that was improperly obtained and that he knows or believes to have been improperly obtained or</p> <p>(c) an identity document that relates to someone else.</p> <p>(2) The requisite intention for the purposes of subsection (1) is:</p>

		<p>(a) the intention of using the document for establishing registrable facts about himself or</p> <p>(b) the intention of allowing or inducing another to use it for establishing, ascertaining or verifying registrable facts about himself or about any other person (with the exception, in the case of a document within paragraph (c) of that subsection, of the individual to whom it relates)</p> <p>(3) It is an offence for a person with the requisite intention to make, or to have in his possession or under his control:</p> <p>(a) any apparatus which, to his knowledge, is or has been specially designed the making of false identity documents or</p> <p>(b) any article or material which, to his knowledge, is or has been specially designed or adapted to be used in the making of false identity documents</p> <p>(4) The requisite intention for the purposes of subsection (3) is the intention:</p> <p>(a) that he or another will make a false identity document and (b) that the document will be used by somebody for establishing, ascertaining or verifying registrable facts about a person</p> <p>A person guilty of an offence under subsection (1) or (3) shall be liable, on conviction on indictment, to imprisonment for a term not exceeding ten years or to a fine, or to both.</p> <p>2. What administrative sanctions are applied in MS to Carrying Companies who allow passengers to board flights, trains, ferries and coaches using forged or counterfeit travel or identity documents?</p> <p><b>SECTION 40 OF THE IMMIGRATION AND ASYLUM ACT 1999, CHAPTER 33 SECTION 1 CARRIERS' LIABILITY:</b></p> <p><a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262605/idi33section1.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262605/idi33section1.pdf</a> states:</p> <p>Section 40 of the Immigration and Asylum Act 1999 (I&amp;AA) (as amended ) came into effect on 8 December 2002. It replaced the Immigration (Carriers' Liability) Act 1987 (ICLA) which has now been repealed. However, carriers will continue to be liable under the ICLA for charges incurred in respect of persons who arrived without the required documents prior to 8th December 2002.</p>
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Section 40 of the I&AA provides for a charge (currently £2,000) to be imposed on the owners, agents or operators of a ship or aircraft where a person requiring leave to enter (i.e. not a British Citizen, or other national of the European Economic Area, or Switzerland) arrives in the U.K. and fails to produce:

a valid “immigration document” which satisfactorily establishes his identity and nationality or citizenship. (An immigration document is defined as a passport or other document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport.)

and, if the individual requires a visa, a visa of the required kind.

A person requires a visa if:

under the Immigration Rules he requires a visa for entry to the United Kingdom; or

under the Immigration Passenger Transit Visa Order 2003 (as amended) he requires a visa to pass through the United Kingdom without entering.

However, a carrier is not liable to charge if it can show that what purported to be the required documents were produced to it when the passenger embarked for the United Kingdom.

If a false document was produced or the passenger impersonated the rightful holder of a document, the carrier is only liable if the falsity of the document or the impersonation is “reasonably apparent”.

3. No.